

could not -- and, the pending civil suit will confirm, did not -- extinguish Apollo's underlying right to use of the bandwidth.

**III. GTE Telephone's Claims That Proposed  
Tariff Changes Have No Impact On  
Apollo's Business Operations Are Wrong**

**A. The General Interrelationship Of  
The Parties' Agreements**

In its Comments (p. 20), GTE Telephone contends "there is no basis for Apollo's contention that the [parties'] contracts were somehow 'interrelated' or 'interdependent.'" Again reciting its perception of California contract law, the carrier insists that each of the contracts is independent from all others, and that any "evidence" of the parties' "understandings and intentions" beyond the words of the documents is "wholly irrelevant." Nonsense.

First, the carrier's suggestion that the parties' agreements were not interrelated, or that the parties didn't view the sequence of contracts to be part of a single business endeavor, defies the obvious. Was it serendipity that four of the agreements, including the Lease Agreement and the Management Agreement, were executed at the same time in 1987?<sup>17/</sup> Or that two customer premises equipment agreements (one each with GTE Telephone and GTE Service) and the Service Agreement with GTE Service were signed on the same day in 1989?<sup>18/</sup> Or that the Lease Agreement and

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<sup>17/</sup> Design Agreement, Construction Agreement, Lease Agreement and Maintenance Agreement, all dated January 22, 1987 (Apollo Brief, Attachments 1, 2, 4, 8).

<sup>18/</sup> Agreement for the installation of Customer Premises CATV Equipment, Enhanced Capability Decoder (Converter Box Agreement), Service Agreement, all dated November 16, 1989 (Apollo Brief, Attachments 6, 12, 14).

the Maintenance Agreement were amended simultaneously in 1991?<sup>19/</sup>  
Does the fact that various of the agreements specifically cross-reference the existence and/or content of others mean nothing?<sup>20/</sup>

Second, GTE Telephone's position that the Commission may not here consider the nature and content of the parties' arrangements -- that the "parties' understandings and intentions outside of these agreements" are "wholly irrelevant" -- once more misperceives the character of these proceedings. This is not a forum for determining common-law contract rights. Instead, the Commission's task is to determine whether the proposed tariffs are just and reasonable. In making that determination, the Commission is not limited by the rules of evidence governing judicial proceedings. Particularly where tariffs propose to alter long-term service arrangements, the Commission's examination of the circumstances attending the parties' agreements and the differences between the contracts and the proposed tariffs is not only appropriate, it is required.

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<sup>19/</sup> Amendment No. 1 to the Maintenance Agreement Between GTE California Incorporated and Apollo CableVision, Inc., both dated May 3, 1991 (Apollo Brief, Attachments 5, 11).

<sup>20/</sup> E.g., Design Agreement ¶B (Apollo Br., Att. 1); Lease Agreement ¶¶ A, 4, 8, 9 (Apollo, Att. 8); Lease Amendment # 1, ¶¶ A, C (Apollo Br., Att. 9); Lease Amendment #2, ¶¶ D, E. (Apollo Br., Att. 10); Lease Amendment #3, ¶¶ 1, 2 (Apollo Br., Att. 11); Maintenance Agreement, ¶¶ A, 1 (Apollo Br., Att. 4); Maintenance Amendment #1, ¶ 1 (Apollo Br., Att. 5); Agreement for the Installation of Customer Premises CATV Equipment, ¶¶ 5, 8 (Apollo Br., Att. 6); CATV Installation Equipment, ¶¶ (b), (c) (Apollo Br., Att. 7); Enhanced Capability Decoder (Converter Box) Agreement, ¶ 2(d) (Apollo Br., Att. 14).

**B. The Relationship Between Apollo's Lease Payments And Maintenance Agreement**

At pages 21-22 of its Comments, GTE Telephone disputes Apollo's earlier explanations that, in the complex of agreements arrived at with the carrier, Apollo's compensation under the Maintenance Agreement was arrived at, in significant part, as an offset to the \$95,000 per month lease charge for bandwidth use. The carrier finds no specific reference to such an arrangement in the Lease Agreement, and declares "absolutely no correlation between the revenue GTECA received from the Lease Agreement and the revenue Apollo received from the Maintenance Agreement." (GTE Comments, p. 22.) More institutional memory loss.

On May 3, 1991, Amendment No. 3 to the Lease Agreement established monthly lease payments for Apollo of \$95,265, based on the carrier's 15-year amortization of "Recoverable Construction Costs." (Apollo Brief, Att. 11, ¶ 4). Because that figure was not initially manageable for Apollo as a cash-flow matter, the parties simultaneously executed Amendment No. 1 to the Maintenance Agreement providing, for the first time, \$17,500 monthly maintenance compensation to Apollo. And ultimately, the structure of Apollo's later bank financing to prepay the lease obligation reflected the expected 5-year period of maintenance income.

If called to testify, Apollo's principals -- as well as Mr. Bache and other GTE officials who conducted the negotiations -- would all agree that the Maintenance Agreement compensation was designed to ease Apollo's lease payment load. The carrier's current pleading rhetoric should be disregarded.

**C. The Carrier's Dispute Of Operational Problems  
Conflicts With The Parties' Daily Experiences**

In its Brief (and earlier), Apollo had noted that GTE Telephone's overall proposal here -- to divide a single system into two parts, each occupied by a competing entity -- was contrived for litigation purposes, and was the cause for both billing and operational problems. The carrier's response here (GTE Comments, pp. 24-26) is perhaps its most disingenuous expression to date.

The carrier begins with a patent untruth: "The [Cerritos] network was never designed to be a unitary system . . . ." (GTE Comments, p. 24.) It should be recalled that it was Apollo's parent company which designed and installed the system for GTE Telephone; what it designed and installed was a standard (albeit underground) 78-channel coaxial system of the same character as it had installed in many other California locations during the 1980's. The design documents are available to the Commission, as are supervising principals of T.L. Robak, Inc., for confirmation.

The carrier's second discussion underpinning is almost as inaccurate: The Cerritos system "has [not] been operated as a unitary system." (GTE Comments, p. 24.) Until GTE's rush to take over in June/July of this year, Apollo "operated" every aspect of the system, as the usual single manager of such a system would. Usage of the system, of course, was shared by GTE Service. But all system operations were performed for GTE Service by Apollo.<sup>21/</sup>

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<sup>21/</sup> As to the "Center Screen" offering, Apollo's services included signal transportation and delivery, drop and subscriber premises installation and billing. As to the "Main Street" offering, Apollo similarly handled all system operations, installation, maintenance, [Continued on next page]

With respect to the operational problems themselves, Apollo explained earlier that GTE Service's new, separate billing activities have rendered Apollo's proprietary customer information accessible by GTE Service. GTE Telephone's response: Tough beans; "Service Corp. has the absolute right to bill for its own services or to contract with any other party to perform those services." (GTE Comments, p. 24.) Apollo demurs.

Concerning problems in retrieving billing information for impulse pay-per-view (IPPV) purchases, GTE Telephone's position is fundamentally schizophrenic, declaring "simply untrue" Apollo's inability to capture certain billing information (GTE Comments, p. 25), yet conceding that "Apollo is apparently experiencing some billing problems" (GTE Comments, p. 26). The carrier settles for insisting that any fault involved lies in Apollo's failure correctly to configure its billing system. (GTE Comments, pp. 25, 26).<sup>22/</sup> And GTE Service (now speaking for itself) warns of its intent to sue Apollo if that deficiency appears to have had earlier

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[Continued from previous page]

etc. GTE Service, however, did its own marketing, billing and subscriber reception equipment provision.

<sup>22/</sup> Elsewhere, GTE Telephone seeks to reassure the Bureau that Apollo and GTE Service "have shared the same decoder for approximately five years with minimal operational problems and this continues to be the case." (GTE Comments, p. 24.) In prior years, of course, the "sharing" was possible because only one system function, run by Apollo alone, was controlling the decoders and daily downloading billing information. The carrier's blithe assertion that problemless "sharing" continues today is belied by more than two months of continuous meetings among technical and operational personnel and contractors trying to make sense out of the Rube Goldberg arrangement GTE Telephone/Service is trying to implement.

adverse effects on its operation. (GTE Comments, p. 26). Such chest-thumping, however, is more distracting than helpful here.

The fact is, as Apollo has explained, that there are problems which have arisen since GTE Telephone split the Cerritos system in half.<sup>23/</sup> As yet, it is unclear why the problem exists, and whether it is remediable. The carrier's contractor, which supplied the new converter boxes beginning in 1989-90, claims the problem to be Apollo's billing system; Apollo's contractor, which designed the billing system, claims the problem to be in the interface specifications provided by the carrier's contractor. The matter is currently being investigated by both parties. What is known, however, is that the current disruptions are substantially a product of an effort to piggy-back two billing systems on a cable network designed for one.

#### **IV. Responses To GTE Telephone's Section-by-Section Analysis**

To highlight their differences, a side-by-side comparison of certain of the proposed tariff provisions and the parties' contract provisions was provided in Apollo's Brief (pp. 7-8). GTE Telephone's Comments (pp. 26-32) offer the carrier's views on that comparison. Following are Apollo's responses to the carrier's comments.

Sections 18.3, 18.4(A) [Limits on use of Apollo's Bandwidth]. Apollo had pointed out that, while its Lease Agreement

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<sup>23/</sup> But a few of the many communications in that regard are appended hereby as Attachment 2.

contained no specific restrictions on the channelizing of its 275 MHz, Transmittal No. 873 prescribes an operation of thirty-nine 6 MHz channels. (Apollo Brief, pp. 7-8). GTE Telephone responds that utilizing digital techniques on the system "would require redesign of the system and a significant change-out and/or addition of equipment," and that under the Lease Agreement it would have first "to agree on a price that would allow [it] to recover its investment." (GTE Comments, p. 27; see also id., p. 30.) Under its tariff approach, GTE Telephone could allow such changes by filing future tariffs if the carrier "finds it feasible and beneficial to expand channel capacity." (Id., p. 27.)

That the tariff is more restrictive than the contract is now conceded. While the agreement permits Apollo to utilize its bandwidth in whatever ways are technologically feasible, the tariff limits Apollo to the current 39-channel configuration. Moreover, the tariff makes any future changes subject to GTE Telephone's view of whether any change is "beneficial" to the carrier.<sup>24/</sup> The carrier would further have an ability to frustrate future Apollo plans by refusing to file implementing tariffs, or by requiring the disclosure of proprietary Apollo business plans as a prerequisite to such tariff revisions -- information which might then be made available to GTE Service.

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<sup>24/</sup> Apollo's interest is not limited solely to use of digital technology; it may well be that future subdivision of analog channels (or other techniques) will be feasible. Yet the use of any such new approaches would now be subject to the carrier's perception that such changes would be "beneficial" to GTE Telephone.

The tariff does not need to express a thirty-nine 6 MHz-channel configuration. If the carrier's true concern is that it not incur unanticipated system-alteration expenses, the tariff can easily provide, for example, that any costs resulting from a change in channelizing Apollo's 275 MHz bandwidth will be borne by Apollo.

Sections 18.3.3(D) [Subscriber Complaints]. GTE Telephone does not dispute that, unlike the contract arrangement, the tariff makes Apollo responsible for handling subscriber complaints without compensation under tariff Section 18.3.3(D) (GTE Comments, p.28.) But the carrier dismisses the matter as insignificant, since it believes Apollo will be able to recoup those costs from the purported savings it will realize in not have to perform other maintenance functions.

That Apollo's responsibilities will be altered from the prior arrangement is conceded. There no support whatever for the carrier's assertion that the costs for the tariff responsibilities will be absorbed by the oft-cited "savings." The imposition of a system-operating-related responsibility without compensation is confiscatory and unjustified.

Section 18.3.3(F) [CPE defects]. Under the Maintenance Agreement, Apollo was compensated, among other things, for assuring that customer premises equipment ("CPE") it installed was operationally compatible with the system. GTE Telephone earlier stressed that anyone -- Apollo, GTE Telephone or any third party -- will now be able to furnish customer premises equipment. But the proposed tariff would impose on Apollo the burden -- without compensation -- of "assuring" that any "facilities on the premises of . . . [Apollo's] subscribers" provided by other than GTE Tele-



phone are "constructed, maintained and operated so as not to interfere with or harm any service provided by the Telephone Company." Under the proposed tariff Apollo might also be liable to GTE Telephone to some unidentified extent if third party-supplied equipment, installed at the request of an Apollo subscriber, created "harm" to the system.

GTE Telephone's response is that it has similar wording in other tariffs, and that no one has the right to impair its provision of service. (GTE Comments, p. 29.) The carrier further contends the tariff doesn't "place any additional conditions or restrictions on Apollo." (Id.)

None of the carrier's assertions, of course, is an answer. In itself, the fact that other tariffs may contain similar provisions is irrelevant. That no one has the right to impair GTE Telephone's service is a meaningless generality; the question here is where responsibility lies if a third party not subject to Apollo's control does so. Finally, Apollo has not argued that this provision restricts its activities; it has argued instead that it increases Apollo's costs and broadens its potential liability to GTE Telephone -- neither of which was true under the parties' agreements. GTE Telephone cannot properly make Apollo the insurer of third parties' actions.

Section 18.3.3(G) [Disclosure of Apollo's Subscriber Data]. Apollo noted that the proposed tariff required that it disclose various subscriber information to GTE Telephone. (Apollo Brief, p. 8.) Apollo has also expressed its concerns that such information is being shared with GTE Service, now a competitor on the Cerritos system. GTE Telephone simply responds that the information called

for is necessary "to install or disconnect drops and to effectively perform maintenance." (GTE Comments, p. 29.)

While such information as subscriber location may be necessary to install a drop, service level information, for example, is not.<sup>25/</sup> Moreover, GTE Telephone has yet to address Apollo's repeatedly expressed concerns about the carrier's sharing Apollo customer information with GTE Service, the proposed new competitor on the system. Vis-à-vis Apollo, GTE Telephone and GTE Service have continuously acted in concert, and GTE Telephone has long maintained that it will not accept limitations on the sharing of Cerritos information with its affiliate. Apollo should not be compelled to provide information to the carrier-affiliated competitor. Safeguards should be included in the tariffs.

Section 18.4(A)(3) [GTE Non-competition Provisions]. In its Brief (p. 8), Apollo noted the non-competition provisions in its earlier agreements with GTE Telephone and GTE Service, and pointed out that the proposed tariff should include the carrier's forswearing indirect competition with Apollo through GTE Service. GTE Telephone states that any non-compete arrangement between GTE Service and Apollo is "irrelevant to this investigation." (GTE Comments, p. 31.)

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<sup>25/</sup> It should be noted in this regard that, whenever GTE Telephone now installs a new drop for Apollo, it is also installing a TIM unit. If Apollo has not requested such installation, its only purpose can be to permit future reception of GTE Service's offerings. There is no indication who, if anyone, is bearing the cost for those installations.

While GTE Service indeed is not the tariff sponsor, it is nonetheless the alter ego of GTE Telephone with respect to Cerritos cable operations. The inclusion of a tariff assurance that GTE Telephone will not compete with Apollo indirectly through its affiliate, and/or will not utilize its tariffed facilities to assist GTE Service in operations inconsistent with that entity's non-competition agreement with Apollo, is entirely appropriate here.

Section 18.4(A)(4) [Rights of First Refusal]. Apollo's Brief pointed out that while the Lease Agreement contained first refusal rights for both the coaxial system and the carrier's fiber network facilities, the tariff omitted the latter. In a huffy footnote (GTE Comments, n. 13), GTE Telephone claims Apollo is asserting a right to use the carrier's "fiber facilities," and proceeds to explain how wrong that is.

Apollo did not, of course, claim any current right to use the "fiber facilities." It pointed out the Lease Agreement's first refusal rights in the Lease Agreement in that regard, and the absence of any preservation of those contract rights in the proposed tariff. As to Apollo's right to use of the coaxial system bandwidth now occupied by GTE Service, see the discussion at pages 9-19, supra.

Section 18.4(A)(6) [Subscriber Drop Charges]. In its Brief (p.8), Apollo pointed out that while it had been largely reimbursed for its \$60 cost of providing drops to subscriber premises under the Maintenance Agreement, the tariff not only withdrew that reimbursement, but GTE Telephone proposes to charge Apollo more than twice that amount (\$112.50) for the carrier's performing the same

service for either Apollo or GTE Service.<sup>26/</sup> GTE Telephone's response is two-fold: the earlier agreement was properly terminated, and its proposed charge is reasonable. (GTE Comments, p. 32.)

Even if its termination of the Maintenance Agreement with Apollo were proper, the carrier has failed to provide any support for its exorbitant proposed charge. As GTE Telephone itself notes, Apollo submitted earlier financial data showing that its actual historical cost for a new drop was approximately \$60 (of which \$55 was reimbursed by GTE Telephone). GTE Telephone does not challenge Apollo's figure, it simply expresses uncertainty whether the Apollo cost figure was for a new drop or reconnecting an existing drop. In fact, the \$60 figure was, as Apollo stated earlier, for a new drop (underground from the street to the subscriber's premises). The carrier's proposed quadrupling of that cost remains absolutely unjustified.

#### **CONCLUSION**

While opposed on many of the specifics here, Apollo and GTE Telephone agree that the Bureau's task here is to determine whether the proposed tariff terms and conditions are just and reasonable under the Communications Act. (See GTE Comments, p. 12.) In its earlier pleadings, Apollo has argued that the statutory propriety of Transmittal No. 873, in light of the Sierra-Mobile principles

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<sup>26/</sup> In fact, the total charge would be \$225.00, one-half of which would allegedly be recovered from the non-requesting system competitor. The irrationality and impermissibility of the carrier's charging a customer for services or equipment not requested has been addressed earlier and will not be repeated here.

and the Commission's own "substantial cause" test, requires a consistency between the terms of any tariff permitted and the terms of the parties' long-term arrangements unless there are overriding public interest reasons otherwise. As shown in this and earlier Apollo filings, GTE Telephone has established no such overriding reasons. What appears even clearer is that the differing tariff provisions were the product of either carrier choice or oversight.

Apollo firmly believes rejection of Transmittal No. 873 to be appropriate. But if the Bureau believes that some form of tariff is required, Apollo urges the Bureau's consideration of two factors which bear directly on the extent of injury this tariff will cause Apollo.

First, many of the specific tariff provisions are harmful, and need not be in their current form. Apollo is prepared, if necessary, to participate in the re-wording of tariff verbiage to obviate injury to Apollo, yet to satisfy any legitimate carrier interest. Second, the Bureau should make clear that any action it takes is not intended to construe or impair Apollo's surviving contract rights. Unless complicated by inadvertent decision wording, such agreement terms as non-competition provisions will remain enforceable. And there is no public interest reason why the Bureau should permit GTE Telephone to use Commission tariff

processes to vitiate even those contract obligations which are not inconsistent with filed tariff terms.

Respectfully submitted,

**APOLLO CABLEVISION, INC.**

By: 

Edward P. Taptich  
GARDNER, CARTON & DOUGLAS  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005  
(202) 408-7100

Its Attorneys

September 30, 1994

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Its Attorneys

September 30, 1994







**GTE Telephone Operations**

June 8, 1993

Suite 102  
13100 Alondra Boulevard  
Cerritos, CA 90701  
310 404-5800

Mr. Thomas Robak  
President  
Apollo CableVision  
13100 Alondra Blvd.  
Suite 104  
Cerritos, CA 90701

Reply To

Dear Tom,

Attached are two original copies of Amendment No. 2 to the GTE/Apollo Service Agreement signed by Clark Barlow. After the appropriate Apollo signature, please return one original copy to me for forwarding to Irving, Texas.

I have issued a check requisition for \$72,400 in accordance with paragraph 4 which should be received in my office by June 15, 1993. I am ready to begin discussions today regarding the release of three channels to Apollo and a mutually agreed upon compensation in accordance with paragraph 2 (Center Screen buys retroactive to December 1, 1992). Payment will be made by July 1, 1993.

It is my understanding that Apollo is in the process of acquiring a digital ad insert system. By December 31, 1993, GTE agrees to purchase from Apollo at market rates (approximately \$25 per 30-second spot) a minimum of 1,100 30-second spots on various Apollo cable channels in order to promote Center Screen. This guarantee applies only if the ad insert system is fully operational on or before July 31, 1993, and remains so through December 31, 1993.

I am looking forward to working with you during the next six months to further analyze the CATV and pay-per-view markets in Cerritos. Please call me or Dick Cecil if you have any questions.

Donald J. Bache  
General Manager-  
Advanced Operations Testing

DJB:dvc  
Enclosure

- c: B. M. Barbe - HQW01N12 - Irving, TX (w/o encl.)  
R. A. Cecil - HQE04N58 - Irving, TX (w/o encl.)  
G. K. Moore - Cerritos, CA (w/o encl.)  
M. A. Porter - HQW01N34 - Irving, TX (w/encl.)  
T. J. Sheets - CA500TJ - Thousand Oaks, CA (w/encl.)

**AMENDMENT NO. 2  
TO THE SERVICE AGREEMENT  
BETWEEN GTE SERVICE CORPORATION AND  
APOLLO CABLEVISION, INC.**

This Amendment No. 2 to the Service Agreement between GTE SERVICE CORPORATION ("GTESC") and APOLLO CABLEVISION, INC. ("APOLLO") is entered into as of December 1, 1992.

**RECITALS**

This Amendment No. 2 to the Service Agreement is entered into with reference to the following agreed facts:

- A. APOLLO and GTESC entered into a Service Agreement that was executed by both parties on November 16, 1989. The parties subsequently entered into Amendment No. 1 to that Service Agreement which was executed by APOLLO on November 18, 1991 and by GTESC on October 4 and October 8, 1991. All references to the "Service Agreement" shall hereinafter refer to the November 16, 1989 document as amended by Amendment No. 1, which documents are hereby incorporated by reference.
- B. The purpose of this Amendment No. 2 to the Service Agreement is to modify certain terms and provisions of the Service Agreement and to reflect certain additional terms that have been agreed to by the parties, all as set forth in this document.


**NOW, THEREFORE,** the parties hereby agree that the Service Agreement shall be amended as set forth below:

- 1. Subsequent to the execution of the Service Agreement and the Amendment No. 1 to the Service Agreement, GTESC has introduced the phrase "Center Screen" for the provision of VOD and NVOD in the City of Cerritos. The parties agree that the phrase "Center Screen" shall be deemed to be synonymous with the phrase "VOD and NVOD."
- 2. Paragraph 8 of the Service Agreement is hereby modified to read as follows:
  - 8. Except as set forth in paragraph 5 of this Amendment No. 2, GTESC shall compensate APOLLO in the amount of \$1.00 per view for each Center Screen program shown in the City of Cerritos on or after December 1, 1992. The parties agree, however, that no portion of the revenue generated by GTESC for products not theatrically released shall be paid to or inure to the benefit of APOLLO.
- 3. The parties agree to add the following new subparagraph (c) to paragraph 9 of the Service Agreement as follows:
  - (c) The time spent by APOLLO CSRs, technicians and engineers at the request of GTESC for promotional support services for six title specific Center Screen promotions.

- (1) The above-mentioned reimbursement shall be at the hourly rate of sixteen dollars and fifty cents (\$16.50) for CSRs, twenty-two dollars and fifty cents (\$22.50) for technicians, and forty-seven dollars and fifty cents (\$47.50) for Apollo's engineers.
4. Paragraph 11 of the Service Agreement is hereby deleted. In consideration of the agreement by APOLLO to delete paragraph 11 and in full and complete satisfaction of any past or future claim for degradation of net revenue per subscriber pursuant to paragraph 11 prior to the date of this Amendment No. 2, GTESC agrees to pay to APOLLO the sum of \$72,400 in cash concurrently with APOLLO's execution of this Amendment and to provide APOLLO with access to three (3) additional channels from those channels currently vacant (Channels 73-78) of GTESC's portion of the bandwidth that is part of the 550 MHz CATV system owned by GTE California Incorporated and leased to GTESC pursuant to that certain lease dated May 8, 1987, at no cost to APOLLO, for the duration of GTESC's testing in Cerritos or December 31, 1993, whichever date occurs last. APOLLO agrees not to use these additional channels to provide any form of pay per view programming other than satellite special events as permitted under the Service Agreement.
5. GTESC warrants and represents that except during certain trial periods, it does not intend to offer Center Screen programs at a price per view to each subscriber at a cost less than four dollars and ninety-five cents (\$4.95) per view for current box office hits, or \$3.95 for other features. GTESC agrees to notify APOLLO prior to the date such trial periods are to commence, and the parties further agree to negotiate in good faith whether additional compensation should be paid to APOLLO based upon the length of the trial period, the title of the material to be viewed, and the price per view to each subscriber.
6. Except as otherwise expressly stated in this Amendment No. 2, the parties ratify and affirm all of the terms and provisions of the Service Agreement.

**IN WITNESS WHEREOF**, this Amendment No. 2 to the Service Agreement is executed on the day and year indicated below.

GTE SERVICE CORPORATION

  
CLARK W. BARLOW  
Senior Vice President-  
Operations

Date: June 2, 1993

APOLLO CABLEVISION, INC.

  
Name: Tom Fland

Title: President

Date: 6/21/93

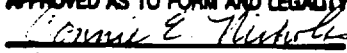
APPROVED AS TO FORM AND LEGALITY  
  
Attorney, GTE Telephone Operations  
Date: 5-25-93





EXHIBIT D

Certified with return  
Receipt #Z 050 178 631

Ray Rodriguez  
Manager / Customer Service Engineer  
TV Com Int'l. (formerly Oak Communications)  
16516 Via Esprillo  
San Diego, CA 92127

June 9, 1994.

RE : Our telephone conversation of 6/7/94

Dear Ray,

To follow up on our above conversation, I would like to hereby reconfirm your indication that the cable system we are operating here in Cerritos is not designed to accomodate two separate entities with two unique billing systems addressing the converter boxes.

The ACS computer cannot cater to the demands of two separate billing systems without giving priority of converter box control to whichever entity sent it the most recent command. Furthermore, the way the system is designed, one company's service disconnection to a subscriber could result in disruption of the other company's services as well, and there would be no protection against access to certain customer billing data between the two companies.

Thank you for your assistance and input on these matters.

Sincerely,

John Mc.Coy  
Technical Supervisor

cc : Tom Robak, President, Apollo CableVision, Inc.  
Ed Taptich, Esq.

EXHIBIT E



Certified with return  
receipt #Z 050 178 630

ATTN.: Chris Rock  
Account Service Manager  
Cable Data / U.S. Computer Services  
Western Service Center  
11020 Sun Center Drive  
Rancho Cordova, CA 95670

June 9, 1994.

RE : Telephone conference of 6/7/94 between the following :  
Chris Rock, Account Service Manager, Cable Data  
Bart Petterle, National Account Manager, Cable Data  
Patrick Kramer, Manager of Addressable Support, Cable Data  
John Mc.Coy, Technical Supervisor, Apollo CableVision, Inc.  
Tom Robak, President, Apollo CableVision, Inc.  
Lisa Dumas, C.F.O., Apollo CableVision, Inc.

Dear Chris,

To follow up on our conversation of 5/7/94 we would like to reconfirm the opinions you expressed regarding the possibility of two separate entities utilizing two independent billing systems in the cable network we are operating here in Cerritos.

You indicated that if such an attempt were made, the result would be a degradation of information rendering subscribers' billing incorrect. Furthermore, control over the services received by a subscriber's converter box would frequently change hands between the two different billing entities and confidentiality of customer information with respect to the two separate entities would be lost.

Please let us know should you have any further input regarding this matter, and thank you for your assistance.

Sincerely,

Lisa Dumas  
C.F.O.

cc : Tom Robak  
Ed Taptich, Esq.

07/18/94 17:24

310 926 8017

APOLLO CABLE

--- ED TAPTICH

002

JUL 18 '94 09:28 CABLEDATA RP SALES

P.2/3

July 18, 1994

**cable  
data**

Lisa Dumas  
Apollo Cablevision  
13100 Alondra Blvd #104  
Cerritos, CA 90701

Dear Lisa:

Attached, please find a memo from Patrick Kramer containing the response to the technical issue you raised on 7/15. I hope this information serves to clarify this issue for you. As always, should you require further information, please feel free to call me at (916)636-5025. Thank you again for your inquiry.

Best Regards,



Bart Petterle  
National Account Manager

attachment

U.S. Computer Services

CableData  
CableData International  
CableData  
International Billing Services

11020 Sun Center Drive  
Rancho Cordova, CA  
95670-6184  
Tel 918 838 5800

JUL 18 '94 09:29 CABLEDATA RP SALES

P.3/3

**cable  
data**

Post-It™ brand fax transmittal memo 7671

# of pages 2

To <b>ED TAPTICH</b>	From <b>TOM ROBAK</b>
Co.	Co.
Dept.	Phone #
Fax #	Fax #

**INTEROFFICE MEMO****To: Bart Petterle****From: Patrick J. Kramer****Date: July 15, 1994****Subject: Apollo - GTE Impulse PPV**

Apollo Cablevision contacted us Friday, July 15th requesting the ability to upload specific impulse PPV purchases from the Oak Controller in their joint Apollo/GTE system. However, under the current controller specifications, the impulse buys on the controller cannot be separated for the two companies. As a result, when an Event Upload session is initiated and impulse records are requested from the controller, the records for ALL purchases are uploaded to CableData. The ramifications are double billing customers for a single PPV event. Until the Oak Controller can filter the impulse records by company and transmit only those purchases to the appropriate corp at the time an upload is initiated, this condition will persist.

lyk

**cc: Bart Petterle  
Sharon Maccini**



CORRESPONDENCE FILE JUL 20 1994

APOLLO  
CABLEVISION

JUL 20 1994

RECEIVED



**GTE Telephone Operations**

Suite 102  
13100 Alondra Boulevard  
Cerritos, CA 90701  
310 404-5800

Reply To

July 20, 1994

HAND DELIVERED

Ms. Lisa Dumas  
Chief Financial Officer  
Apollo CableVision  
13100 Alondra Blvd.  
Suite 104  
Cerritos, CA 90701

Dear Ms. Dumas:

Please be advised that the range of event numbers assigned to Apollo CableVision for the purpose of scheduling and billing for pay per view events will be reassigned effective July 20, 1994. Prior to July 20, 1994, Apollo CableVision was assigned the ACS controller event range of 0001 to 0100. Effective 4:00 p.m. on July 20, 1994, Apollo will be reassigned to the ACS controller event range of 8090 through 8191. Functionally there will be no change to the management of Apollo CableVision's pay per view events on the ACS controller.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Bogner", with a long horizontal flourish extending to the right.

Don Bogner  
District Manager

DB:dvc